

BETWEEN **DRUG FREE SPORT NEW ZEALAND**

Applicant

AND **PAUL CLOUT**

Respondent

AND **NEW ZEALAND FOOTBALL**

Interested Party

**DECISION OF SPORTS TRIBUNAL
17 JULY 2019**

Tribunal Sir Bruce Robertson (Chairman)
Dr Lynne Coleman
Chantal Brunner

Participants Adam McDonald, counsel for Applicant
Hayden Tapper, Drug Free Sport NZ
David Fraundorfer, counsel for Respondent

Registrar Mike Selwyn

Background

1. Paul Clout is a footballer who returned a positive result for Probenecid from a test conducted on 2 December 2018. Probenecid is a Specified Substance prohibited at all times, both in and out of competition.

Proceedings

2. Drug Free Sport New Zealand (DFSNZ) filed an Application for Provisional Suspension on 23 January 2019, and provided material related to Mr Clout's positive test for Probenecid. Mr Clout retained a lawyer and elected to get his 'B' sample tested.
3. On 5 February 2019, counsel filed a joint memorandum advising that the Application for Provisional Suspension would not be opposed. Mr Clout was suspended with immediate effect from 5 February 2019.
4. DFSNZ subsequently filed the substantive proceedings against Mr Clout on 11 February 2019. Several extensions were provided by joint agreement of counsel to allow for the results of Mr Clout's 'B' sample to be analysed.
5. The results of the 'B' sample confirmed those of the original sample, and Mr Clout's additional enquiries into whether the protein powder he had consumed were subject to contamination ultimately confirmed that the protein powder was not contaminated with Probenecid.
6. On 3 May 2019, Mr Clout admitted the violation. He also submitted a statement denying that he intentionally took Probenecid. Mr Clout also filed statements from his partner and father in support of his position.
7. On 16 May 2019, DFSNZ filed submissions that confirmed that it did not allege that Mr Clout intentionally took Probenecid.
8. Under SADR 10.2 the sanction is a two year period of ineligibility for a first violation where the violation involves a Specified Substance and DFSNZ is unable to establish intent. On 11 July 2019, the parties filed a joint memorandum as to sanction that submitted that a period of two years of ineligibility was appropriate, backdated to the date of the test having regard to Mr Clout's timely admission of the violation. A copy of that memorandum is annexed.

9. The Tribunal having considered all available material is satisfied it is able to accept the proposed sanction without the need for a hearing and makes the orders proposed. The circumstances here are similar to those in previous cases determined by the Tribunal.

Order

10. Mr Clout's suspension will be for a period of two years backdated to commence from 2 December 2018 (the date of the test). This means that Mr Clout is ineligible to participate in competitive sport until 2 December 2020.

Dated: 17 July 2019



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Sir Bruce Robertson
Chairman

Sports Tribunal of New Zealand

ST 01/19

between

DRUG FREE SPORT NEW ZEALAND

Applicant

and

PAUL CLOUT

Respondent

JOINT MEMORANDUM AS TO SANCTION

|| 8 July 2019

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JOINT MEMORANDUM REGARDING SANCTION

MAY IT PLEASE THE TRIBUNAL

1. The parties have had the opportunity to confer and have reached an agreed position to present to the Tribunal.
2. Mr Clout admits to breaching r 2.1 of the Sports Anti-Doping Rules 2018 (SADR) (Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*).
3. The parties have considered the statements filed in this matter and jointly submit that the appropriate sanction to be imposed on Mr Clout for breach of r 2.1 is a period of two years' ineligibility, with credit for the time served under his provisional suspension. DFSNZ does not allege that Mr Clout intentionally took Probenecid.

Background

4. By a letter dated 29 January 2019, Drug Free Sport New Zealand (DFSNZ) notified Mr Clout of an Adverse Analytical Finding regarding his A sample collected on 2 December 2018.
5. The Prohibited Substance identified in Mr Clout's sample was Probenecid, a Specified Substance prohibited at all times, both in and out of competition, under the WADA Prohibited List 2018.
6. DFSNZ filed a provisional suspension application regarding Mr Clout on 29 January 2019. He was provisionally suspended by consent on 5 February 2019. DFSNZ filed substantive Anti-Doping Rule Violation proceedings on 13 February 2019.
7. Mr Clout requested that his B Sample be analysed. The result confirmed the results of his A Sample analysis. Mr Clout sought information regarding the method of sample testing and analysis from the testing laboratory. Mr Clout also commissioned additional testing of a protein powder that he had taken, the results of which ultimately confirmed that the supplement was not contaminated with Probenecid. The results of the testing were subject to some delay.
8. On 3 May 2019 Mr Clout filed a Form 2 admitting the violation. He also submitted a statement denying that he intentionally took Probenecid. Mr Clout also filed statements from his partner and father in support of his position.
9. On 16 May 2019, DFSNZ filed submissions that confirmed that it does not allege that Mr Clout intentionally took Probenecid.
10. Under r 10.2 of the SADR the period of ineligibility for breach of r 2.1 is two years for a first violation where the violation involves a Specified Substance and DFSNZ is unable to establish intent.

No change to period of ineligibility

11. Mr Clout filed a statement in which he states that he does not know how the Probenecid entered his system. He detailed medicines that he took in the days before the sample collection for a cold. It is Mr Clout's position that he did not have sufficient funds or remaining product to have them all tested for Probenecid contamination. The protein powder that was tested for contamination did not return a positive result.
12. In this case, the parties agree that there is no evidence that warrants reducing the period of ineligibility under r 10.5 or r 10.6.

Backdating

13. The starting point under the SADR is that the period of ineligibility should start from the date of imposition of the sanction. Any period of provisional suspension shall be credited against the total period of ineligibility served.
14. Rule 10.11.2 allows the period of ineligibility to start earlier where the athlete admits the violation in a timely fashion after being confronted with the Anti-Doping Rule Violation by DFSNZ. As noted, Mr Clout admitted the violations upon receiving the results of further testing. The parties agree that the Tribunal could properly find that there was a timely admission by Mr Clout in this case.
15. For these reasons, the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose upon Mr Clout a period of two years ineligibility backdated to the date of sample collection, being 2 December 2018, for his breach of SADR 2.1.

Dated: 11 July 2019



Adam McDonald
Counsel for the Applicant



David Fraundorfer / Blair Shepherd
Counsel for the Respondent